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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 PEYMAN aka PATRICK MASACHI,

11 Plaintiff/Counter-defendant,

12 v.

13 ELIAHO RAYHAN, *et al.*,

14 Defendants/Counter-claimants.  
15

Case No. 2:09-CV-01384-KJD-VCF

**ORDER**

16 Presently before the Court is Counter-claimants' Motion for Attorneys' Fees (#133).

17 Counter-defendant filed a response in opposition (#139) to which Counter-claimants replied (#143).

18 **I. Background**

19 Lucky Blue 103, LLC is a Nevada limited liability company which was partially owned by  
20 Counter-claimant The EMR Family Trust (42.5%) and Counter-defendant Peyman Masachi  
21 ("Masachi") (1%). Masachi acted as managing member until April 2009 when members holding 99%  
22 of the interests of Lucky Blue appointed Malihe Rayhan as managing member. While he acted as  
23 managing member, Masachi took several actions whose validity were dispute by the other members.  
24 Those disputes led to the present litigation where Masachi filed a complaint for declaratory relief on  
25 which he succeeded and Counter-claimants filed several counter-claims prevailing upon their claim for  
26 conversion.

1 The Court granted summary judgment on Masachi's claims for declaratory relief on  
2 September 29, 2011. A bench trial was held on the remaining counter-claims on August 28 and 29,  
3 2012. On or about April 11, 2012, Counter-claimants served an Offer of Judgment on Counter-  
4 defendant whereby they offered to settle the remaining counter-claims for \$15,000.00 and an  
5 acknowledgment that Malihe Rayhan was the managing member of Lucky Blue 103, LLC. After trial,  
6 the Court entered judgment against Masachi and for Counter-claimants Malihe Rayhan and the EMR  
7 Family Trust in the amount of \$22,806.08.

## 8 II. Analysis

9 Counter-claimants have now moved for an award of attorneys' fees pursuant to Nev. Rev.  
10 Stat. § 17.115(4)(d) (the court may award reasonable attorneys' fees incurred by the party who made  
11 the offer of judgment from the date of service of the offer to the date of entry of judgment). Though  
12 Counter-defendant disputes that fees may be awarded under this statute in a diversity action, the  
13 Court disagrees.

14 In a diversity case, the determination of an award of attorneys' fees involves the application of  
15 the Erie Doctrine to offer of judgment rules. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).  
16 Statutes allowing for recovery of attorneys' fees are considered substantive for Erie purposes.  
17 McMahan v. Toto, 256 F.3d 1120, 1132 (11th Cir. 2001); Walsh v. Kelly, 203 F.R.D. 597, 598 (9th  
18 Cir. 2001). Here, there is no conflict between the Federal Rule of Civil Procedure 68 and the Nevada  
19 statute as asserted by Masachi. Furthermore, Masachi's other arguments are unpersuasive. Counter-  
20 claimants clearly prevailed at trial and the fact that the offer of judgment contained a non-monetary  
21 agreement does not render the Offer invalid.

22 When there is a pretrial offer of judgment that the offeree refuses and the final judgment  
23 results in an outcome less favorable to the offeree, NRS § 17.115 authorizes the trial judge to award  
24 attorney fees to the offeror. In exercising its discretion, the trial court must evaluate the following  
25 factors: (1) whether a counter-claim was brought in good faith; (2) whether the offeror's offer of  
26 judgment was brought in good faith; (3) whether the offeree's decision to reject the offer and proceed

1 to trial was grossly unreasonable or in bad faith; and (4) whether fees sought by the offeror are  
2 reasonable and justified in amount. See Uniroyal Goodrich Tire Co. v. Mercer, 890 P.2d 785, 789  
3 (Nev. 1995). Having carefully considered and weighed the four factors, the Court finds that the  
4 balance tips in Counter-claimants' favor. The counter-claim was clearly brought in good faith, the  
5 offer of judgment was brought in good faith and was reasonable. While the offeree's decision to  
6 reject the offer may not have been grossly unreasonable or in bad faith, that factor does not outweigh  
7 the others. Finally, the fees sought by counter-claimants are clearly reasonable and justified.  
8 Therefore, the Court awards Counter-claimants their attorneys' fees.

9 Analyzing the factors found in Barney v. Mt. Rose Heating & Air Conditioning, 192 P.3d 730,  
10 736 (Nev. 2008) and Local Rule 54-16, the Court finds the amount of attorneys' fees sought in this  
11 action reasonable and necessary. Furthermore, Masachi has only opposed liability for fees and not the  
12 amount or calculation of fees.

13 First, Plaintiff achieved a positive result on the counter-claims. The novelty and difficulty of  
14 the questions involved was typical of this kind of property and business dispute. Real estate  
15 transactions gone bad are not unusual in this jurisdiction. The case required the skill that is typically  
16 expected of an attorney in this jurisdiction. Counsel concedes that handling this action did not  
17 preclude her or other associated counsel from accepting other employment. The fixed fee charged by  
18 Plaintiff's counsel is reasonable and customary in this jurisdiction for the kind of litigation that was  
19 being conducted. The experience, reputation and ability of the attorneys are commensurate with the  
20 work they performed and the fee charged. The other facts do not apply or affect the analysis.  
21 Accordingly, the Court awards the \$25,728.50 to Counter-claimants and against Counter-defendant.

### 22 III. Conclusion

23 Accordingly, IT IS HEREBY ORDERED that Counter-claimants' Motion for Attorneys' Fees  
24 (#133) is **GRANTED**;

1 IT IS FURTHER ORDERED that Counter-claimants, Malie Rayhan and The EMR Family  
2 Trust, are awarded attorneys' fees and costs against Counter-defendant Peyman Masachi in the  
3 amount of \$25,728.50.

4 DATED this 27th day of September 2013.

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8 Kent J. Dawson  
United States District Judge  
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